HON'BLE SRI JUSTICE B. CHANDRA KUMAR

W.P.NO. 12775 OF 1998

DATED 20.3.2012

BETWEEN:

S. Gopala Krishnan

… Petitioner

And

A.P. State Agro Industrial Development
Corporation, represented by its Vice-Chairman
And Managing Director and another

…Respondents

ORAL ORDER:

This writ petition is filed to declare the action of the respondents in not paying the first petitioner the terminal benefits due to him vide proceedings No.Pers/AM(P)II/11443/97 dated 25.10.1997, as arbitrary, illegal and for a consequential direction to pay the first petitioner the terminal benefits due to him and conclude the disciplinary proceedings against him.

The first petitioner died and his legal representatives are continuing the proceedings.

The brief facts of the case are that the 1st petitioner was appointed as Plant Manager in APIDC (Andhra Pradesh Industrial Development Corporation) i.e., the first respondent Corporation on 8.9.1975. His services were terminated by the first respondent on 16.7.1988. Aggrieved by the same, he filed W.P.No.12949/1988 and this Court allowed the same on 21.4.1995. However, an observation was made in the said order that it is open to the first respondent to initiate ***de novo*** enquiry against the first petitioner. When the first respondent filed W.A.No.1662 of 1995, challenging the order under the writ petition, however the same was dismissed on 24.12.1995.

In view of the orders passed by this Court, the first petitioner was reinstated into service vide order dated 25.3.1996. On reinstatement, he requested for payment of back wages i.e., wages during the period from the date of his suspension till the date of reinstatement. As far as the disciplinary proceedings are concerned, ***de novo*** enquiry was ordered. One M. Gopala Krishnan, IAS (Retd) was appointed as an enquiry officer. However, the said Gopala Krishnan did not proceed with the enquiry. Then one K.V. Ramana Rao was appointed as an enquiry officer, who submitted a report holding that the charges levelled against the first petitioner have not been proved. Then the respondent-Corporation issued proceedings dated 28.7.1999 agreeing with the enquiry report of K.V. Ramana Rao and exonerated the first petitioner of the charges levelled against him. However, during the pendency of the enquiry, the first petitioner filed W.P.No.3841/1997 for payment of back wages from the date of suspension till the date of reinstatement. This Court passed interim orders on 2.5.1997 directing the sole respondent to consider the payment of arrears of salary to the first petitioner. The respondent-Corporation issued proceedings dated 5.5.1997 approving the release of 50% of wages pending enquiry against the first petitioner. W.P.No.3841 of 1997 was disposed of by this Court on 18.9.1997 directing the first petitioner to make a representation claiming arrears of salary within a period of two weeks from the date of said order and further directed the respondent to consider the same within a period of two months. The petitioner had submitted a representation on 23.10.1997 stating that he did odd jobs from 16.7.1988 to 27.3.1996 and an amount of Rs.3,32,500/- might be deducted from the arrears. Then the Corporation issued a circular introducing Voluntary Retirement Scheme (VRS) on 11.7.1997. The first petitioner opted for VRS on 29.7.1997.

The respondent-Corporation initially did not accept the request of the first petitioner observing that it was a conditional option. Then, the first petitioner submitted a fresh application and the respondent-Corporation accepted the request of the first petitioner for VRS vide proceedings dated 25.10.1997, with effect from 31.10.1997. Then, the first petitioner made several representations for payment of back wages on the ground that he has been exonerated from charges. The respondent-Corporation paid an amount of Rs.4,37,363/- from 29.3.2001 towards VRS dues. The petitioner claimed Rs.12,43,855/- being the arrears of salary from the date of suspension till the date of reinstatement and balance of VRS benefits. The first petitioner passed away on 24.9.2004. The 3rd petitioner (son of first petitioner) submitted a representation on 31.12.2005, seeking payment of arrears, ex-gratia and gratuity etc.

As seen from the counter, the case of the respondent-Corporation is that the first petitioner in his affidavit dated 17.3.1997 stated that he was not gainfully employed from the date of termination till the date of reinstatement and when it was brought to the notice of this Court that the first petitioner was not gainfully employed, the earlier W.P.No.3841/97 was disposed of giving an opportunity to the first petitioner to make a representation within two weeks from 18.9.1997 and since the first petitioner did not make any such representation within the stipulated period, now he cannot claim the arrears of back wages.

It is also submitted that the respondent-Corporation gave an elaborate reply, rejecting the request of the 3rd petitioner for payment of arrears. Further, the case of the respondent-Corporation is that the 1st petitioner had opted for VRS and accordingly was retired with effect from 31.10.1997 pending finalization of the departmental enquiry. With regard to payment of benefits under VRS, it is the case of the Corporation that it

had taken the last pay drawn particulars of the first petitioner and settled the amount of Rs.4,37,163/- as VRS benefits, duly taking into account 16 years of qualifying service for calculation of gratuity, notice pay, leave salary etc. It is also submitted that an amount of Rs.4,796/- towards difference of gratuity arrears was only payable to the first petitioner and the same was also paid on 7.3.2006.

Sri S. Suryaprakash Rao, learned counsel for the petitioners, submitted that when once the first petitioner has been exonerated of the charges and consequently the suspension order and termination orders have to be termed as illegal and once the termination is illegal, the first petitioner is entitled to all the consequential benefits as he would be deemed to be in service. It is also his submission that the respondent-Corporation ought to have taken the period from the date of suspension till the date of reinstatement as if the first petitioner continued in service and accordingly ought to have taken the total period of service for calculation of VRS benefits and paid entire back wages with interest.

Sri Meherchand Noori, the learned counsel for the Corporation, submitted that the first petitioner worked as Pesticides Formulation Manager in Kanoria Chemicals & Industries Limited from 24.11.92 to 21.5.95 and that he had suppressed the said fact when he filed W.P.No.3841 of 1997 and thus misled the Court and the respondent-Corporation. His further submission is that though this Court disposed of W.P.No.3841 of 1997, but there is specific direction to the first petitioner to make a representation within a period of two weeks from the date of the order, and as the first petitioner failed to make the representation within the said period, he cannot claim back wages subsequently i.e., after the time granted to him is over. His third submission is that when once the first petitioner has accepted VRS, now he cannot claim any further benefits

and that the voluntary retirement benefits, if any, have to be calculated only till 1.11.1997.

The only point that arises for consideration is whether the first petitioner is entitled for the arrears of salary from the date of suspension till the date of reinstatement and for consequential benefits of taking into consideration the said period for calculating the VRS benefits?

As seen from Para (8) of the counter, the respondent-Corporation categorically mentioned that the 1st petitioner was retired voluntarily with effect from 31.10.1997 pending finalization of the departmental enquiry. That means whatever amounts were settled at the time of voluntary retirement were subject to the finalization of the departmental enquiry. Admittedly, the departmental enquiry concluded in favour of the first petitioner, exonerating him of all the charges. Once he is exonerated from all the charges levelled against him, the termination has to be treated as illegal and once the termination is treated as illegal, the first petitioner is entitled for all the consequential benefits. Though the learned counsel for the petitioners submitted that as far as the first petitioner is concerned, since he was working as a Plant Manager, the question whether he was gainfully employed during the period i.e., from the date of suspension till the date of reinstatement does not arise, we need not discuss the said point in detail since the 1st petitioner himself, in his letter dated 9.4.2001 addressed to the Corporation, admitted that while he was working in Kanoria Chemicals & Industries Limited, he earned wages and sought for deduction of Rs.3,32,500/- from the total amount of back wages, claimed by him.

As seen from the order of this Court in W.P.No.3841 of 1997 dated 18.9.1997, this Court directed the 1st petitioner to make a representation to the respondent, claiming salary from 30.8.1986 to 25.3.1996 within a

period of two (2) weeks from the date of said order. But, in all fairness, it must be read as from the date of receipt of the copy of the order of this Court. Unless the first petitioner receives the copy of the said order, it cannot be presumed that he was informed about the result of the case and the direction of this Court on the very same day on which the orders were passed by this Court and that is not the stand of the Corporation also. Though the specific direction of this Court is there that the first petitioner should make a representation within 2 weeks from date of the order, in the absence of any material on record to show that the 1st petitioner was present before the Court on that day or that he was informed about the direction of this court on the same day, the period should be calculated from the date of receipt of a copy of the orders in the said writ petition. However, there is no record to show when the first petitioner received the copy of the said order in W.P.No.3841 of 1997. In the above circumstances, his claim should not be denied merely on the ground of delay.

Coming to the aspect of suppression of facts, it is true that the first petitioner seems to have made a false statement in the affidavit that he was not gainfully employed, whereas the material filed by the respondent-Corporation shows that the first petitioner was gainfully employed from 24.11.1992 to 21.5.1995. Moreover, the first petitioner himself made a representation that he was employed and sought deduction of Rs.3,32,500/-. The truth shall succeed. Once a person makes a false statement, he has to face all the troubles and consequences. However, the first petitioner died long back. He is no more and it is not clear under what circumstances, the affidavit in W.P.No.3841 of 1997 was prepared and whether the first petitioner could give prior instructions to his counsel while preparing the said affidavit or not. Anyhow, since the first petitioner

is no more, there is no body to explain under what circumstances he had suppressed the fact of his employment in Kanoria Chemicals and Industries Limited. Be that as it may, the fact remains that he has been exonerated of all the charges. Admittedly he was gainfully employed during the relevant period, as referred above, I am of the view that ends of justice would be met if the total period i.e., from 24.11.92 to 21.5.95 be deducted while calculating the back wages.

Though Sri Meherchand Noori, learned counsel for the respondent-Corporation, submits that the first petitioner himself has voluntarily signed on the VRS payment particulars and it is deemed that he has accepted whatever amount that was paid to him, but I am not inclined to accept the said contention because the respondent-Corporation itself in the counter affidavit, categorically mentioned that permitting the first petitioner to take VRS is subject to the result of the departmental enquiry and therefore whatever amount that has been paid to the 1st petitioner would be treated as paid, subject to the result of the departmental enquiry. Therefore, I do not see any force in the contention of the learned counsel for the respondent.

Sri Meherchand Noori has relied on the case in between **A.K. BINDAL V. UNION OF INDIA**[1]**.** In view of the observations made supra, since the respondent has accepted voluntary retirement of the first petitioner subject to the result of the departmental, the decision cited supra has no application to the facts of this case. In that case, the employees had voluntarily accepted the VRS and taken benefits and in the above circumstances, it was held that since employees had accepted the benefits, they cannot reagitate pay revision.

Learned counsel also relied on the case in between **HEC VOLUNTARY RETD. EMPLOYEES WELFARE SOCIETY V. HEAVY**

ENGINEERING CORPORATION LTD[2]**.** The decisions cited 1 and 2 supra can be distinguished on facts and therefore they have no application to the facts of the present case.

The learned counsel for the petitioners has relied on the case in between **CH. PRABHAKAR RAO V. DIG OF POLICE, NEW DELHI RANGE**[3], wherein this Court relied on the judgment of the Apex Court in case between **DEVENDRA PRATAP NARAIN RAI SHARMA V. STATE OF UTTAR PRADESH**[4]**.**

In the said judgment, the Apex Court held that when the dismissal order is set aside by a Court of law, the employee is entitled for the remuneration, which he would have earned had he been permitted to work.

Learned counsel for the petitioners also relied on several decisions in cases between **THE CENTRAL COOPERATIVE CONSUMERS" STORE LTD V. LABOUR COURT**[5]**, YOGINATH D. BAGDE V. STATE OF MAHARASHTRA**[6]**, IBRAHIM SHAHABUDDIN SHAIKH V. SANGLI DISTRICT CENTRAL COOPERATIVE BANK LTD**[7]**, MAHARAJA SAYAJIRAO UNIVERSITY OF BARODA V. R.S. THAKKAR**[8]**, CAPT. M. PAULANTHONY V. BHARAT GOLD MINES LTD**[9]**, J. RAVI KUMAR V. CHIEF GENERAL MANAGER, HINDUSTAN PETROLEUM CORPORATION LTD**[10]**, BOKAM SIMHADRI V. VISAKHAPATNAM PORT TRUST**[11]**, COL. D.S. RAJU POLYTECHNIC V. R.V. NARASIMHA RAJU**[12]**, G.A. SARMA V. SYNDICATE BANK, MANIPAL**[13]**, HARSHARANJIT SINGH V. THE**

BOARD OF DIRECTORS, RASHTRIYA CHEMICALS & FERTILIZERS LTD[14], RULDU RAM V. STATE OF PUNJAB[15], UPKAR SINGH V. MUNICIPAL COMMITTEE, SUNAM, DISTRICT SANGRUR[16], B.M. PATIL V. THE GENERAL MANAGER, SOUTH CENTRAL RAILWAY, SECUNDERABAD[17], N.V. KADAMBARI V. STATE OF KERALA[18], and **SNEHALATA SOREN V. DEPUTY DIRECTOR OF HEALTH SERVICES[19]**

Though the learned counsel for the petitioners has relied on the number of cases cited supra, but it is not necessary to refer to all such decisions.

In the above circumstances, the respondents are directed to pay all the arrears of back wages to the first petitioner from the date of suspension till the date of reinstatement excluding the period from 24.11.92 to 21.5.95 during which period, the first petitioner worked in Kanoria Chemicals & Industries Limited. Similarly excluding the said period, the remaining period should be treated towards the total period of service rendered by the 1st petitioner for calculating the VRS benefits. The amounts already paid shall be given credit. In view of the delay in payment of back wages, it is made clear that the 2nd and 3rd petitioners shall be entitled to 6% interest from the date of filing the Writ Petition till the date of this order. If the Respondents fail to pay the amount within six weeks from the date of receipt of the representation from petitioners 2 and 3, they shall be entitled to 7 ½% interest thereafter i.e., from the date of expiry of six weeks referred above. The petitioners 2 and 3 may make a fresh representation to the respondents giving fresh calculations within a period of four (4) weeks from the date of receipt of a copy of this order and thereafter the

respondents shall calculate the back wages and VRS benefits as directed supra, within a period of six (6) weeks thereafter.

Subject to the above directions, the Writ Petition is allowed. No order as to costs.

As a sequel, miscellaneous petitions if any shall stand closed.

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JUSTICE B. CHANDRA KUMAR

DATE: 20.3.2012

CVM

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[1] (2003) 5 SCC 163

[2] (2006) 3 SCC 708

[3] 2012 (1) ALD 57

[4] AIR 1962 SC 1334

[5] SC SERVICE RULINGS (VOL.9) P.222

[6] (1999) 7 SCC 739

[7] SC SERVICE RULINGS (VOL.4) P.1

[8] SC SERVICE RULINGS (VOL.4) P.2

[9] (1999) 3 SCC 679

[10] 2006(5) ALT 309

[11] 2005 (3) SLR 232

[12] 2000 (1) ALT 207 (D.B)

[13] 1999 (4) ALT 146

[14] 1997 (1) An.W.R. 264

[15] 2005 (5) SLR 58

[16] 2005 (1) SLR 465

[17] 1991 (1) SLR 651

[18] 1988 (2) SLR 25

[19] 1986 (3) SLR 82